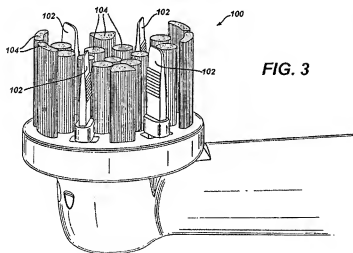
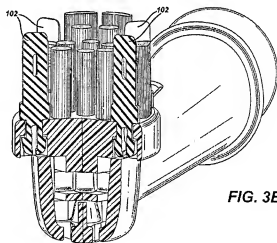


from the support member, each elastomeric fin having a textured surface,” as recited in each independent claim. Accordingly, the rejection is in error and should be withdrawn.

The Examiner, however, asserts that that Calabrese discloses “elastomeric fins (6; paragraph 18) pivotably mounted (as the fins themselves are capable of pivoting relative to the head, paragraphs 16- 18).” Office Action, page 5, lines 19-21. Applicants traverse this assertion. Calabrese does not disclose or suggest that the disclosed “rubbery cleaning element (6)” is “pivotably mounted in” the brush head 3 of Calabrese. Calabrese merely indicates that the “rubbery cleaning element is an enlarged bristle made of rubbery material” and that it can be “in the form of a flap or lamella.” Calabrese, paragraphs 14 and 16. The Examiner, however, appears to be asserting that any cleaning element capable of being flexed relative to the head of the brush is “pivotably mounted.” This is an unreasonable interpretation of the instant claim language. The claims recite that the “plurality of elastomeric fins [are] pivotably mounted in . . . the support member.” Such elastomeric fins are depicted in Figs. 3 and 3B of the instant application, reproduced below.



**FIG. 3**



**FIG. 3B**

As recited in paragraph 34 of the instant specification, “the elastomeric elements are pivotably mounted.” This is in contrast to the tufts of bristles 104, which are depicted as

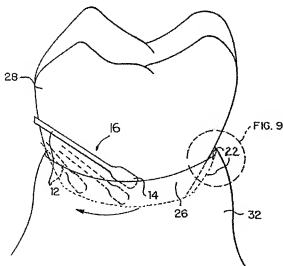
“stationary” or as “fixed tufts.” See paragraphs 33 and 34 of the instant specification. Accordingly, one having ordinary skill in the art at the time of invention would recognize the claim language “plurality of elastomeric fins pivotably mounted in . . . the support member” requires that the elastomeric fins are not just able to flex relative to the support member, but also that the elastomeric fins are mounted in the support member such that the mounted section can pivot relative to the support member. Because the claim language excludes a flexible fin fixedly connected to the support member, the rejection is in error and should be withdrawn.

The rejection is also in error because an artisan having ordinary skill in the art at the time of the invention, even if looking at Biro, Calabrese, White, and Kressner, would not find it obvious to combine the references in the manner alleged by the Examiner. While Biro, Calabrese, and Kressner disclose electric toothbrushes having rotating heads, White discloses a manually operated gingival stimulator. White discloses that the gingival stimulator

differs from a toothbrush in that the tips are fewer in number, so that they have the ability to penetrate deeper. The force of a large number of bristles, as in toothbrushes used today, press against surrounding tooth and gingiva. Thus the surrounding tissues prevent the necessary deeper stimulation interproximally and into the sulcus by the individual fibers. The surrounding areas may become damaged since they are overbrushed and even traumatized.

White, col. 2, lines 23-30.

FIG. 8



Accordingly, an artisan having ordinary skill in the art would not have found it obvious to combine the features of White with the electric toothbrush of Biro because White discloses that the disclosed deep penetration is incompatible with the large number of bristles of a normal toothbrush. This deep penetration of the White device is depicted in Fig. 8 of White, reproduced above. The White gingival stimulator is disclosed as being "placed softly at the gumline. The handle moved in a circular fashion while increasing pressure onto the stimulator towards the sulcus, 26." White, col. 3, lines 9-11. In addition to recognizing that White discloses that the gingival stimulator elements are incompatible with the numerous bristles of a toothbrush, an artisan having ordinary skill in the art would also recognize that this is a very different motion than the oscillating rotational motion of an electric toothbrush, or even the scrubbing motion of a manual toothbrush. The skilled artisan would therefore not have expected that the features of White would be suitable for use on a power toothbrush head that rotationally oscillates relative to the neck of the power toothbrush. Accordingly, the rejection is in error and should be withdrawn.

Applicants also assert that the combination of these four references indicates the use of hindsight analysis. Although the use of hindsight in the examination process is difficult to avoid, Applicants request that the Examiner reconsider the critical question of whether one having ordinary skill in the art at the time of invention, aware of all of the prior art, would really have found the combination of these four different disclosures to be obvious. As previously noted, prior to testing brushes embodying the invention in clinical trials, Applicants themselves questioned whether a power toothbrush head having the claimed features would perform well. This uncertainty was due to Applicants' awareness of the difficulty in predicting the effect of various combinations of design elements on user comfort and brushing efficacy. Accordingly, Applicants assert that one having ordinary skill in the art would not find any particular reason to combine the subset of prior art alleged by the Examiner over the multitude of other possible combinations. As the Supreme Court recently clarified, for an invention to be obvious under § 103 it requires consideration of the factors set forth in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966), including an analysis of the scope and content of the prior art and the

differences between the claimed subject matter and the prior art. Moreover, and importantly, an “obvious to try” reasoning for why one having ordinary skill in the art would have combined the elements in the manner claimed must satisfy two requirements: “there is a design need or market pressure to solve a problem and there are a *finite* number of *identified, predictable* solutions.” *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 17 (2007) (emphasis added). Given the crowded nature of the toothbrush art and the unpredictability of how different arrangements and elements will impact cleaning efficiency and comfort, it cannot be said that there is a finite number of identified, predictable solutions to meet the market need for a more comfortable and better cleaning toothbrush.

Claims 27 and 44 further stand rejected under 35 U.S.C. §103(a) as being unpatentable over Biro, Calabrese, White, and Kressner as applied to claims 35 and 43, in further view of Coney (U.S. Patent No. 1,924,152). Applicants assert that this rejection is also in error for the reasons discussed above. Coney also does not disclose or suggest a power toothbrush having “a plurality of elastomeric fins pivotably mounted in and extending from the support member, each elastomeric fin having a textured surface,” as recited in each independent claim. There is no indication in Coney that either the hog’s hair bristles C or rubber bristles D and E are “pivotably mounted in . . . the support member.” Furthermore, Coney discloses a manual toothbrush while Biro, Calabrese, and Kressner disclose electric toothbrushes. An artisan having ordinary skill in the art would have been aware that just because a feature works in a manual toothbrush does not mean that it will necessarily work in the same manner in an electric toothbrush. As an example, Applicants note that one having ordinary skill in the art would not expect the rubber bristles D and E of Coney to have the same function of massaging the gums when transferred from a manual toothbrush, adapted for a scrubbing motion, to an electric toothbrush adapted for oscillating rotational movement. Accordingly, Applicants request reconsideration.

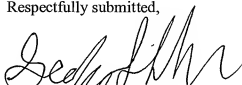
Claims 38, 45, and 50-53 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Biro, Calabrese, White, and Kressner as applied to claims 35 and 43, in further view of Carlucci (U.S. Publication No. 2002/0108194). Applicants assert that this rejection is also in error for the reasons discussed above. Carlucci also does not disclose or suggest a power

toothbrush having "a plurality of elastomeric fins pivotably mounted in and extending from the support member, each elastomeric fin having a textured surface," as recited in each independent claim. Accordingly, this rejection is also in error and should be withdrawn.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 5/13/2008

  
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